

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

EUGENE WILLIAMS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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Civ. No. 23-944 (KM)

MEMORANDUM AND ORDER

Pro se petitioner Eugene Williams, a federal prisoner at FCI Allenwood Low, filed a motion to vacate, set aside, or correct a sentence pursuant to 28 U.S.C. § 2255. DE 1. In accordance with Rule 4(b) of the Rules Governing Section 2255 Proceedings, I have screened the petition and determined that pre-answer dismissal is unwarranted.

The Court notes, however, that the motion filed by Williams lacks the required notice under *United States v. Miller*, 197 F.3d 644 (3d Cir. 1999). Because federal law requires a district court to dismiss a second or successive § 2255 motion, 28 U.S.C. §§ 2244(a), 2255(h), a § 2255 movant must include in his or her first § 2255 motion all available federal claims. *See Miller*, 197 F.3d at 649; Rules Governing § 2255 Cases, Rule 2(b)(1), 28 U.S.C.A. foll. § 2255. Consequently, the Court will now provide the *Miller* notice to Williams. Before a district court may rule on a § 2255 motion from a pro se petitioner, it must notify the petitioner that he may either (1) have his pending motion considered as his all-inclusive § 2255 motion and ruled on as filed, or (2) withdraw the motion and file an amended timely § 2255 motion that includes all available federal claims. *Miller*, 197 F.3d at 652.

Therefore, within 45 days, Williams shall notify the Court as to whether he (1) wishes to have his motion ruled on as filed or (2) wishes to withdraw his motion and submit one all-inclusive § 2255 motion. If Williams wishes to submit an amended motion, he shall do so within 45 days of the entry of this memorandum and order.

Accordingly, IT IS this 27th day of February, 2023,

ORDERED that Williams shall notify the Court within 45 days of the entry of this memorandum and order whether he wishes to have his motion ruled on as filed or whether he wishes to withdraw his motion and submit one all-inclusive § 2255 motion that includes all available federal claims; and it is further

ORDERED that to the extent Williams wishes to withdraw his original motion and submit one all-inclusive amended motion, he must submit the amended motion within 45 days of the entry of this memorandum and order; and it is further

ORDERED that, if Williams fails to submit for filing an amended § 2255 motion within 45 days of the date of the entry of this memorandum and order, then this Court will consider Docket Entry Number 1 as Williams's one and only all-inclusive § 2255 motion; and it is further

ORDERED that the Clerk of the Court shall serve a copy of this memorandum and order on Williams by regular U.S. mail, accompanied by a blank Motion to Vacate, Set Aside, or Correct a Sentence by a Person in Federal Custody, Form AO 243 (modified): DNJ-Habeas-004(Rev.01-2014); and it is further

ORDERED that the Clerk's service of the blank § 2255 motion form shall not be construed as this Court's finding that the original petition is or is not timely or that Williams's claims are or are not duly exhausted.

/s/ Kevin McNulty

KEVIN MCNULTY
United States District Judge